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12 Attorneys for Defendants
13 Collins Financial Services, Inc. and
14 Nelson & Kennard

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 DAVID TOURGEMAN,

18 Plaintiff,

19 vs.

20 COLLINS FINANCIAL SERVICES,
21 INC., a corporation; NELSON &
22 KENNARD, a partnership, DELL
23 FINANCIAL SERVICES, L.P., a
24 limited partnership; DFS
25 ACCEPTANCE, a corporation, DFS
26 PRODUCTION, a corporation,
27 AMERICAN INVESTMENT BANK,
28 N.A., a corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 08-CV-1392 JLS NLS

**DECLARATION OF TOMIO B.
NARITA IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
MOTION TO COMPEL, AND IN
SUPPORT OF DEFENDANTS'
CROSS-MOTION FOR
PROTECTIVE ORDER AND
SANCTIONS**

Date: April 5, 2010

Time: 9:30 a.m.

Crtrm: 1101

The Honorable Nita L. Stormes

1 I, Tomio B. Narita, declare as follows:

2 1. I am an attorney duly licensed to practice in this district court and before
3 all courts of the State of California. I am a partner of Simmonds & Narita LLP,
4 counsel for defendants Nelson & Kennard and Collins Financial Services, Inc.
5 (“Collins”). I make this declaration in support of the Defendants’ Opposition to
6 Plaintiff’s Motion to Compel Further Responses And Cross-motion For Protective
7 Order And Sanctions. I have personal knowledge of the facts set forth below, and if
8 called as a witness, I could and would testify competently thereto.

9 2. I am the counsel for Defendants that was engaged in the meet and confer
10 process regarding certain of the discovery responses that are the subject of this
11 motion. Plaintiff was represented in that process by Brett Weaver. True and correct
12 copies of the relevant meet and confer correspondence are attached to the Declaration
13 of Brett M. Weaver in Support of Plaintiff’s Motion to Compel (Docket 95-4) as
14 Exhibits D, E, F, G, H, and I. In addition, Mr. Weaver and I spoke for nearly two
15 hours about the disputes on January 7, 2010.

16 3. There are eighteen (18) separate discovery requests that are the subject
17 of this motion that were never mentioned by Plaintiff in any of the meet and confer
18 letters or in the lengthy call between counsel on January 7, 2010. Mr. Weaver never
19 indicated that Plaintiff had any issues with the following discovery responses:

- 20 • **Nelson & Kennard’s responses to document requests numbered 1, 2,**
21 **17, or 28, or its response to interrogatory number 13;**
- 22 • **Collins’ responses to document requests numbered 1, 2, 16, 19, 22,**
23 **23, 24, 26 or 28, or its responses to interrogatories numbered 4, 5,**
24 **14, or 18.**

25 4. On March 9, 2010, I informed Plaintiff’s counsel by email that I had no
26 record that Plaintiff had ever attempted to meet and confer regarding the discovery
27 responses enumerated above. I asked that, in accordance with the Local Rules,
28 Plaintiff withdraw his motion in its entirety, or at least withdraw it with respect to the

1 requests listed above where no meet and confer had occurred. A true and correct
2 copy of my email is attached hereto as **Exhibit A**.

3 5. There was no response to my email, so on March 10, 2010, I called
4 counsel for Plaintiff, Dan Murphy, regarding my request. He did not agree to
5 withdraw the motion or modify its scope.

6 6. Later in the afternoon on March 10, 2010, I received an email from
7 counsel for Plaintiff, Keith Cochran, indicating that Plaintiff would not withdraw the
8 motion. I responded, reiterating that Plaintiff had failed to meet and confer with
9 respect to eighteen of the discovery requests at issue in Plaintiff's motion to compel,
10 and I listed the requests at issue. Mr. Cochran responded that Plaintiff will "not
11 withdraw the motion in its entirety, nor will [he] withdraw it as it related to any of the
12 requests [I] identified." A true and correct copy of our email exchange is attached
13 hereto as **Exhibit B**.

14 I declare under penalty of perjury that the foregoing is true and correct.
15 Executed this 15th day of March, 2010 at San Francisco, California.

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17 By: s/Tomio B. Narita
18 Tomio B. Narita
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PROOF OF SERVICE

I, Tomio B. Narita, hereby certify that:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816. I am counsel of record for the defendants in this action.

On March 15, 2010, I caused **DECLARATION OF TOMIO B. NARITA IN SUPPORT OF DEFENDANTS' OPPOSITION TO MOTION TO COMPEL, AND IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR PROTECTIVE ORDER AND SANCTIONS** to be served upon the parties listed below via the Court's Electronic Filing System:

VIA ECF

Brett M. Weaver
brett@johnsonbottini.com
Counsel for Plaintiff

Daniel P. Murphy
dmurphy245@yahoo.com
Counsel for Plaintiff

Francis A. Bottini, Jr.
frankb@johnsonbottini.com
Counsel for Plaintiff

Frank J. Johnson
derekw@johnsonbottini.com
Counsel for Plaintiff

Kent R. Christenson
kchrstenson@calljensen.com
Counsel for defendants Dell Financial Services, L.L.C., and
CIT Financial USA, Inc.

Lisa A. Wegner
lwegner@calljensen.com
Counsel for defendants Dell Financial Services, L.L.C., and
CIT Financial USA, Inc.

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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed at San Francisco, California on this 15th day of March, 2010.

3
4 By: s/Tomio B. Narita
5 Tomio B. Narita
6 Attorneys for Defendants
7 Collins Financial Services, Inc. and
8 Nelson & Kennard
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Exhibit A

Stephanie Schmitt

From: Tomio Narita
Sent: Tuesday, March 09, 2010 3:43 PM
To: Brett M. Weaver; dmurphy245@yahoo.com
Cc: Wayne Call; Kathy Casford; Tomio Narita; Stephanie Schmitt; Jeffrey Topor
Subject: Tourgeman - issues with your motion to compel

Brett:

We have reviewed the motion to compel that plaintiff filed against Nelson & Kennard and Collins Financial Services. As you know, the local rules and Federal Rules require that the parties must meet and confer regarding any allegedly insufficient discovery responses before any motion to compel is filed. Despite this, we have no record of plaintiff ever seeking to meet and confer with us regarding numerous of the discovery requests that are the subject of your pending motion. They are as follows:

Nelson & Kennard Discovery Responses That Were Not The Subject Of Any Meet And Confer:

Requests for Production 1, 2, 17, 28
Interrogatory 13

Collins Discovery Responses That Were Not The Subject Of Any Meet And Confer:

Requests for Production 1, 2, 16, 19, 22, 23, 24, 26, 28
Interrogatories 4, 5, 14, 18

These requests were not mentioned in any of your meet and confer letters to me, nor were they addressed during our lengthy call where we discussed the remaining issues you had with our responses.

For this reason, I ask that you either withdraw your motion to compel in its entirety, or, at a minimum, confirm in writing that you are withdrawing your motion with respect to these discovery requests. I would appreciate hearing your response by noon tomorrow so that we do not need to waste time or Court resources to resolve this.

Tomio B. Narita
Simmonds & Narita LLP
44 Montgomery Street, Suite 3010
San Francisco, California 94104
Direct line (415) 283.1010
Mobile (415) 519.6093
Main Line (415) 283.1000
Fax (415) 352.2625
email: tnarita@snllp.com
www.snllp.com

Exhibit B

Stephanie Schmitt

From: Keith Cochran [keithc@johnsonbottini.com]
Sent: Thursday, March 11, 2010 8:51 AM
To: Tomio Narita
Cc: Brett M. Weaver; dmurphy245@yahoo.com; Jeffrey Topor; Stephanie Schmitt
Subject: RE: Tourgeman motion to compel

Tomio,

We believe we've fulfilled our meet & confer obligations. Thus, we will not withdraw the motion in its entirety, nor will we withdraw it as it relates to any of the requests you've identified.

Regards,

Keith



Keith M. Cochran
501 W. Broadway, Suite 1720
San Diego, California 92101
Tel: 619.309.4421
Fax: 619.238.0622
www.johnsonbottini.com

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From: Tomio Narita [mailto:tnarita@snllp.com]
Sent: Wednesday, March 10, 2010 2:45 PM
To: Keith Cochran
Cc: Brett M. Weaver; dmurphy245@yahoo.com; Jeffrey Topor; Stephanie Schmitt; Tomio Narita
Subject: RE: Tourgeman motion to compel

Keith:

I noticed that you have started a separate email chain, rather than responding to the one I sent earlier that outlines the dispute in detail. I'm going to paste the text of my prior email in here, so there is no confusion about the topic.

As I previously stated, the local rules and Federal Rules require that the parties must meet and confer regarding any allegedly insufficient discovery responses before any motion to compel is filed. Despite this, we have no record of plaintiff ever seeking to meet and confer with us regarding numerous of the discovery requests that are the subject of your pending motion.

There 18 discovery requests, as follows:

Nelson & Kennard Discovery Responses That Were Not The Subject Of Any Meet And Confer:

Requests for Production 1, 2, 17, 28
Interrogatory 13

Collins Discovery Responses That Were Not The Subject Of Any Meet And Confer:

Requests for Production 1, 2, 16, 19, 22, 23, 24, 26, 28
Interrogatories 4, 5, 14, 18

These requests were not mentioned in any of your meet and confer letters to me, nor were they addressed during our lengthy call where we discussed the remaining issues you had with our responses.

Keith, although I am not certain, I believe that you were a participant on the phone call that we had. If so, please confirm that you are aware that these discovery requests were never discussed on the call.

For this reason, I repeat my request that you either withdraw your motion to compel in its entirety, or, at a minimum, confirm in writing that you are withdrawing your motion with respect to these 18 discovery requests.

Meanwhile, I will be calling the court's clerk to check on the judge's availability to hear this dispute on an expedited basis.

Regards

Tomio B. Narita
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Fax (415) 352.2625
email: tnarita@snllp.com
www.snllp.com

From: Keith Cochran [mailto:keithc@johnsonbottini.com]
Sent: Wednesday, March 10, 2010 2:05 PM
To: Tomio Narita
Cc: Brett M. Weaver; dmurphy245@yahoo.com
Subject: Tourgeman

Tomio,

We first initiated the meet & confer process on June 24, 2009. For over seven months we attempted in good-faith to meet & confer with you regarding your clients' deficient discovery responses. To date, we have exchanged six letters, several emails, and engaged in a nearly two hour telephonic discussion regarding this matter. As such, we will not agree to withdraw the motion to compel.

Regards,

Keith



Keith M. Cochran
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San Diego, California 92101
Tel: 619.309.4421
Fax: 619.238.0622
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